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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: **MAR 09 2004**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the former Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on November 24, 1969, in Vietnam. The record reflects that the applicant's mother, [REDACTED] married [REDACTED] United States (U.S.) citizen, in Vietnam on October 15, 1973. Paul Schaberger formally adopted the applicant in Vietnam, on November 6, 1973. Information found in the applicant's and in the applicant's mother's alien file (A21 067 350) reflects that the applicant's mother, was born in Vietnam on August 15, 1950, and that she became a naturalized U.S. citizen on June 5, 1980. The record reflects that the applicant was admitted into the United States as a lawful permanent resident on February 25, 1977. The applicant seeks a certificate of citizenship pursuant to section 320 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1431.

The district director determined that the applicant had failed to supply the Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS) with his mother's original U.S. Certificate of Naturalization. The application was subsequently denied for lack of prosecution.

On appeal, the applicant asserts that his mother became a U.S. citizen prior to his 18th birthday, and that he automatically became a U.S. citizen by operation of law at that time. The applicant submits a copy of his mother's 1980 Naturalization Certificate, and states that his mother is in the process of trying to obtain an original Certificate of Naturalization, in order to comply with the Service's documentary request.¹

Section 320, of the former Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

- (1) such naturalization takes place while such child is under the age of 18 years; and
- (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The applicant has established that his adoptive father was born a U.S. citizen and that his mother became a naturalized U.S. citizen in 1980, when the applicant was 10 years old. The applicant additionally established that he obtained lawful permanent resident status in 1977, when he was 7 years old, and that he resided permanently in the U.S. during the required time period. The applicant has therefore established that he obtained automatic U.S. citizenship at the time of his mother's naturalization in the U.S., and that he qualifies for a certificate of citizenship pursuant to section 320 of the former Act. Accordingly, the appeal will be sustained.

¹ The AAO notes that the applicant's mother's alien file reflects that she applied for a replacement Certificate of Naturalization on April 30, 2002. Her application was approved on July 9, 2002, and the applicant's mother was issued a new Certificate of Naturalization on September 19, 2002. The AAO notes further that the applicant's mother's alien file contains a duplicate copy of her original certificate of naturalization issued on June 5, 1980.


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ORDER: The appeal is sustained.